

DETAILED ACTION

Citation to the Specification will be in the following format: (S. # : ¶/L) where # denotes the page number and ¶/L denotes the paragraph number or line number. Citation to patent literature will be in the form (Inventor # : LL) where # is the column number and LL is the line number. Citation to the pre-grant publication literature will be in the following format (Inventor # : ¶) where # denotes the page number and ¶ denotes the paragraph number.

Status of Application

The response dated 8/21/2010 has been received and will be entered. Claims 2-4 and 7-16 are pending. Claims 2-4 and 7 are currently amended. Claims 1, 5-6 and 17-20 are acknowledged as cancelled.

Response to Arguments

Drawings

I. With respect to the objection to the drawings for failing to comply with 37 CFR 1.84(p)(5) due to reference characters not mentioned in the description, the amendment to the specification obviates the objection. The objection is WITHDRAWN.

Claim Rejections – 35 U.S.C. §112

I. With respect to the rejection of Claims 7-20 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, the traversal is on the grounds that the definitions of “R” and

“Q” found in the specification have been added to Claim 7. (Remarks of 10/21/2010 at 8). This is persuasive. The rejection is WITHDRAWN, however new rejections appear infra. The rejection of Claims 17-19 are mooted by cancellation and likewise WITHDRAWN.

Claim Rejections – 35 U.S.C. §103

I. With respect to the rejection of Claims 1 and 20 under 35 U.S.C. 103(a) as being unpatentable over US 6,471,942 to Miller, et al., the rejection is mooted by cancellation and WITHDRAWN.

II. With respect to the rejection of Claims 5-6 under 35 U.S.C. 103(a) as being unpatentable over US 6,471,942 to Miller, et al. as applied to claim 1 above, and further in view of Tabata, et al., Biological functions of fullerene, Pure Appl. Chem. 1999; 71(11): 2047-2053 (hereinafter “Tabata at __”), the rejection is mooted by cancellation and WITHDRAWN.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

I. Claims 7-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7, as currently amended, recites “Q” as “a protecting group.” This language is recited at (S. 7: 8) of the substitute specification. While there is support for this language, it is not clear what this term in fact means. This issue was briefly addressed with Applicants representative – see attached interview summary. If the term is to be broadly construed to

encompass anything, then it renders everything else recited in the Markush group redundant. If it has a narrower construction, this is not evident from the disclosure. If it is to take a meaning advanced in the interview that it is a group introduced in the synthesis to block an interfering function and carried out the desired reaction, then it is not clear what is being claimed, i.e. whether the intermediate (with the protecting group) or the final product is being claimed. Typically a “protecting group” is introduced only to be removed after the desired reaction is carried out.

Allowable Subject Matter

I. Claims 2-4 are allowed.

The reasons for allowance as set forth in the Non-final Office Action dated 6/21/2010 are expressly incorporated herein by reference. These remarks (i.e. linkage through the malonyl groups) would be equally applicable to Claims 7-16 if the issues under 35 U.S.C. 112 are resolved.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 1736

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL C. MCCRACKEN whose telephone number is (571)272-6537. The examiner can normally be reached on Monday through Friday, 9 AM - 6 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley S. Silverman can be reached on (571) 272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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